

Paperwork Reduction Act Submission Supporting Statement
Annual Mandatory Collection of Elementary and Secondary Education
Data for the Education Data Exchange Network

August 2006

Attachment A

Federal Register Notices

For the final 30-day public comment period, Attachment A includes the Notice of Proposed Information Collection, covering the EDEN 2006-2007 data collection, published in the *Federal Register* on August 7, 2006 and the Notice of Proposed Rulemaking, establishing the conditions of mandatory information collections, published in the *Federal Register* on August 7, 2006.

For the initial 60-day public comment period, Attachment A includes the Notice of Proposed Information Collection, covering the EDEN 2006-2007 data collection, published in the *Federal Register* on May 1, 2006 and the Notice of Proposed Rulemaking, establishing the conditions of mandatory information collections, published in the *Federal Register* on April 27, 2006.

This attachment also includes a copy of the letter sent by Assistant Secretary Luce to the Office of Management and Budget as part of the terms of clearance established for this collection. This letter describes the efforts of the Department to establish a robust internal agency data evaluation effort and maintain the historic EDEN commitment to communicate with the data providers in the state education agencies.

Two examples of that commitment to communicate are the two email messages to the PBDMI list serve that invite review and comment on both *Federal Register* notices. Both are included in this attachment.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 318. For additional information, contact the system manager.

[FR Doc. 06-6722 Filed 8-4-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: August 1, 2006.

Leo J. Eiden,

Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development.

Type of Review: Revision.

Title: Annual Mandatory Collection of Elementary and Secondary Education Data for the Education Data Exchange Network (EDEN).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 17,152.

Burden Hours: 570,804.

Abstract: The Education Data Exchange Network (EDEN) is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. To minimize the burden on the data providers, EDEN seeks the transfer of the proposed data as soon as it has been processed for State, District, and School use. These data will then be stored in EDEN and accessed by federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use.

Additional Information: The Department of Education is specifically requesting the data providers in each State Education Agency review the proposed data for availability, consistency with state data definitions, and appropriate use. Our responses to the public comments that were submitted in May and June are found in Attachment E. There are two additional issues state data providers are asked to address.

The Department proposes collecting the EDEN data groups from the Civil Rights Survey directly from the districts in 2006 as it has historically collected that data. It is the Department's intent to move this data collection into the EDEN Submission System in the future and ask state education agencies to submit the data for their districts. The Department plans to specify in the 2007-2008 EDEN paperwork submission request that all civil rights data groups and categories be included in the EDEN Submission System

beginning with the 2007-2008 school year. During a transition period through 2009-2010, the Department may continue to use the Web-based EDEN Survey Tool or other mechanism to collect these data directly from districts in those states that are unable to report required civil rights items from the SEA level through EDEN. The Department would like to know what challenges this decision will put on the states and how the Department might work with the states to mitigate any problems.

In response to the public comment regarding the challenges of submitting the whole EDEN data set and the need to prioritize the EDEN data and focus on the submission of the most important and useful data, the Department has developed a prioritized phase-in plan to the states that is presented in Attachment B of the EDEN 2006-2007 data collection package. All EDEN data will still need to be submitted within the two-year transition period but the expectation to submit will be adjusted based on which data is most available and most highly required by the Department. The EDEN Submission System will receive all requested EDEN data from every state that can submit any EDEN data from the 2006-2007 school year. The Department would like to know if this adjustment will help the States make more timely submissions of EDEN data and if States agree with the prioritization of the data groups.

In this issue of the **Federal Register** the Department is publishing Proposed Guidance on Maintaining, Collecting, and Reporting Data on Race and Ethnicity to the U.S. Department of Education. Data on race and ethnicity in the format outlined in the proposed guidance will be required to be reported to ED no later than the 2009-2010 school year. Those States that can provide it sooner are encouraged to do so. Since this guidance may directly and immediately affect the collection of EDEN data, the Department encourages relevant public comment on the impact of this guidance on the collection of EDEN data as part of this EDEN paperwork clearance process.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3017. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to

ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-12695 Filed 8-4-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary of Education proposes priorities that the Department of Education (Department) may use for any appropriate discretionary grant program in fiscal year (FY) 2007 and in FY 2008. We take this action to focus Federal financial assistance on expanding the number of programs and projects Department-wide that support activities in areas of greatest educational need. Although we expect that these priorities will have the greatest applicability to programs authorized by the Elementary and Secondary Education Act of 1965 (as amended by the No Child Left Behind Act of 2001), we are establishing the priorities on a Department-wide basis, so that Department offices can use one or more of these priorities in any discretionary grant competition, as appropriate.

DATES: We must receive your comments on or before September 6, 2006.

ADDRESSES: Address all comments about these proposed priorities to Margo K. Anderson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W311, Washington, DC 20202-5910. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov.

You must include the term "Department Priorities" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Margo Anderson. Telephone: (202) 205-3010 or via Internet at Margo.Anderson@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on

request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 4W333, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

General

In the four years since the enactment of the No Child Left Behind Act of 2001, there have been significant changes in our educational system that provide a strong framework for reaching the goal that all students will be proficient in reading/language arts and mathematics by the year 2014. States have put in place rigorous new accountability systems and in this school year (2005-2006) administered reading and mathematics assessments covering all students in grades 3 to 8 and at least once for students in grades 10 to 12. By school year 2007-2008, States will be assessing students in science at least once in each of three grade spans (3-5, 6-9, 10-12). A focus on professional development and teacher qualifications

is helping States to ensure that increasing numbers of students are being taught by highly qualified teachers. School districts are providing new support and assistance to schools in need of improvement, while making available public school choice and supplemental educational services options to eligible students who attend these schools.

National Assessment of Educational Progress (NAEP) results for older students provide a reminder of the need to continue to emphasize high standards and accountability for all students, especially those in the higher grades. The 2005 NAEP math results for 8th graders, for example, are both illustrative and alarming; less than one-third of 8th graders, and just 13 percent of low-income 8th graders, scored at the proficient level or above. High school test scores in mathematics have barely budged since the 1970s, and according to the American College Testing, Inc. (ACT), less than half of high school graduates in 2005 were ready for college-level math and science coursework.

America's rapidly changing economy requires an educational system that is producing high school graduates with the skills needed to be successful in postsecondary education and the workforce. In addition to improving the academic achievement of students in mathematics and science, we must expand the number of Americans mastering foreign languages critical to national security and to our participation in the global economy. High schools must develop a larger pool of technically adept and numerically literate Americans, a continual supply of highly trained mathematicians, scientists, and engineers, and more students with higher levels of proficiency in critical-need languages. The Department believes that high-quality professional development for secondary school teachers is a critical part of the solution, because it can help ensure that these teachers have the content knowledge and expertise required to improve student achievement.

Rigorous instruction, high standards, and accountability for results are helping to raise achievement in the early grades. Now America must complete the task. We must focus on improving the mathematics and science achievement of secondary school students, expanding foreign language learning to include critical-need languages, providing teachers with better training and support, helping districts improve all their schools, and ensuring that all students meet rigorous



Federal Register

**Monday,
August 7, 2006**

Part V

**Department of
Education**

**Proposed Guidance on Maintaining,
Collecting and Reporting Data on Race
and Ethnicity to the U.S. Department of
Education; Notice**

DEPARTMENT OF EDUCATION**Proposed Guidance on Maintaining, Collecting and Reporting Data on Race and Ethnicity to the U.S. Department of Education****AGENCY:** Department of Education.**ACTION:** Request for comments.

SUMMARY: The Secretary is proposing guidance to modify the standards for data on race and ethnicity used by the Department of Education. Once adopted, this guidance will provide educational institutions and other recipients of grants and contracts from the Department with straightforward instructions for their collection and reporting of data on race and ethnicity.

We request from all interested parties written comments on the proposed guidance.

DATES: We must receive your comments on or before September 21, 2006.

ADDRESSES: Address all comments regarding this proposed guidance to Patrick J. Sherrill, US Department of Education, 400 Maryland Avenue, SW., Room 6C103, Washington, DC 20202-0600. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: <http://www.regulations.gov>.

Or you may send your Internet comments to us at the following address: comments@ed.gov.

You must include the phrase "Guidance for Data on Race and Ethnicity" in the text of your paper document or the subject line of your electronic message to ensure that your comments will be considered.

FOR FURTHER INFORMATION CONTACT: *For general information:* Patrick J. Sherrill, US Department of Education, 400 Maryland Avenue, SW., Room 6C103, Washington, DC 20202-0600, telephone: (202) 708-8196 or Edith K. McArthur, US Department of Education, National Center for Education Statistics, 1990 K Street, NW., Room 9115, Washington, DC 20006, telephone: (202) 502-7393.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotope, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Invitation To Comment**

We invite you to submit comments regarding this proposed guidance. During and after the comment period, you may inspect all public comments about this proposed guidance in Room 6C103, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Public Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public record for the proposed guidance. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Proposed Guidance*I. Purpose*

This proposed guidance is provided to the public to solicit comments on how the US Department of Education (the Department) is proposing to modify standards and aggregation categories for collecting information on race and ethnicity. The proposed changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (1997 Standards).¹ The 1997 Standards instituted a number of changes for how Federal agencies should collect data on race and ethnicity.

This proposed guidance is designed to be straightforward and easy to implement. Whenever possible, we have proposed a Department-wide standard. However, in certain situations, we have tailored the standard to the different needs of the institutions collecting data.² The Department recognizes that

¹ See OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58781 (October 30, 1997); <http://www.whitehouse.gov/omb/fedreg/1997standards.html>.

² For example, for the purposes of No Child Left Behind, States are allowed to define major racial and ethnic groups using categories that may be different than the seven categories announced in this guidance. These differences may reflect the State using more categories than the seven, less categories than the seven, or a decision to use subsets of the seven categories announced in this guidance. Additionally, in the Integrated Postsecondary Education Data Systems (IPEDS) and Rehabilitation Services Administration (RSA) data collections, grantees are permitted to use a race unknown category, while in elementary and

implementing the changes required by OMB to improve the quality of data on race and ethnicity may result in an additional burden to educational institutions. In developing this proposed guidance, we have sought to minimize the burden of implementation on local and State educational agencies (LEAs and SEAs), schools, colleges, universities, (hereinafter collectively referred to as "educational institutions"), and other recipients of grants and contracts from the Department (hereinafter referred to as "other recipients"), while developing guidance that would result in the collection of comprehensive and accurate data on race and ethnicity that the Department needs to fulfill its responsibilities. We have done so by using the same reporting categories used by the Equal Employment Opportunity Commission (EEOC), so that local educational agencies can use the same reporting requirements for students and staff.

This proposed guidance applies to the collection of individual-level data and to aggregate data on race and ethnicity reported to the Department. Aggregate data mean the total data on race and ethnicity that are reported to the Department by educational institutions and other recipients. The data are collected by them and reported in the aggregate to the Department. This proposed guidance directly addresses three sets of issues:

(A) How educational institutions and other recipients will collect and maintain data on race and ethnicity from students and staff;

(B) How educational institutions and other recipients will aggregate data on race and ethnicity when reporting those data to the Department; and

(C) How data on multiple races will be reported and aggregated under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

In addition, this proposed guidance provides information regarding the implementation schedule for these changes.

II. Background

In October 1997, OMB issued revised standards for the collection and reporting of data on race and ethnicity. A transition period was provided in order for agencies to review the results of Census 2000, the first national data collection that implemented the revised standards. (See the discussion in Part

secondary programs use of a race unknown category is not permitted.

IV.) The Department plans to begin the process of implementing all necessary changes by the school year beginning in the Fall of 2006, with the implementation required to be completed by the Fall of 2009.³

The 1997 Standards include several important changes:

A. OMB revised the minimum set of racial categories by separating the category "Asian or Pacific Islander" into two separate categories—one for "Asian" and one for "Native Hawaiian or Other Pacific Islander." Therefore, under the 1997 Standards, there are five racial categories:

- (1) American Indian or Alaska Native,
- (2) Asian,
- (3) Black or African American,
- (4) Native Hawaiian or Other Pacific Islander, and
- (5) White.

B. For the first time, individuals have the opportunity to identify themselves as being of or belonging to more than one race. In the 2000 Census, 2.4 percent of the total population (or 6.8 million people) identified themselves as belonging to two or more racial groups. For the population under 18 years old, 4.0 percent (or 2.8 million children) selected two or more races.⁴

C. In an effort to allow individuals—rather than a third party—to report their race and ethnicity, the 1997 Standards strongly encourage "self-identification" of race and ethnicity rather than third party "observer identification."

D. Under the 1997 Standards, OMB strongly encouraged the use of a two-question format when collecting data on race and ethnicity; *i.e.*, individuals should first indicate whether or not they are of Hispanic/Latino ethnicity; then, individuals may select one or more races from the five racial categories.

III. Summary of Guidance

The Department proposes to modify its standards for the collection and reporting of data on race and ethnicity in the following manner:

A. Educational institutions and other recipients will be required to collect data on race and ethnicity using a two-question format on the educational institution's or other recipient's survey instrument. The first question would be

whether or not the respondent is Hispanic/Latino. *Hispanic or Latino* means a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."

The second question would ask the respondent to select one or more races from the following five racial groups:

(1) *American Indian or Alaska Native*. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment.

(2) *Asian*. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(3) *Black or African American*. A person having origins in any of the black racial groups of Africa.

(4) *Native Hawaiian or Other Pacific Islander*. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(5) *White*. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. *See* 1997 Standards, 62 FR 58789 (October 30, 1997).

(*See* the discussion in Part IV.A.1 and 2 of this notice.)

B. Educational institutions and other recipients should allow students, parents, and staff to "self-identify" race and ethnicity unless self-identification is not practicable or feasible. (*See* the discussion in Part IV.A.3 of this notice.)

C. The Department encourages educational institutions and other recipients to allow all students and staff the opportunity to re-identify their race and ethnicity under the 1997 Standards. (*See* the discussion in Part IV.A.4 of this notice.)

D. The Department proposes to have educational institutions and other recipients report aggregated data on race and ethnicity in 7 categories:

- (1) Hispanics of any race; and, for Non-Hispanics only,
- (2) American Indian or Alaska Native,
- (3) Asian,
- (4) Black or African American,
- (5) Native Hawaiian or Other Pacific Islander,
- (6) White, and
- (7) Two or more races. (*See* the discussion in Part IV.B.1 of this notice.)

E. The Department proposes to continue its current practice for handling the reporting of individuals who do not self-identify a race and/or

an ethnicity. Elementary and secondary educational institutions will continue to use observer identification when a respondent refuses to self-identify his or her race and/or ethnicity. The Department would not include a "race and/or ethnicity unknown" category in its aggregate elementary and secondary collections of data on race and ethnicity. The Integrated Postsecondary Education Data System (IPEDS) would continue to use the category of "nonresident alien" as an alternative to collecting race/ethnicity from nonresident aliens (information that is not needed for civil rights reporting purposes). IPEDS would also continue to include a "race and/or ethnicity unknown" category for reporting aggregate data from postsecondary institutions. Similarly, RSA will continue to use a "race and/or ethnicity unknown" category for reporting aggregate data. The "race and/or ethnicity unknown" category would not appear on forms provided to postsecondary students and staff or to clients and staff of RSA recipients. (*See* the discussion in Part IV.B.2 of this notice.)

F. When the Department asks educational institutions and other recipients to report data on race and ethnicity, the Department indicates in the instructions to the collection how long educational institutions and other recipients are required to keep the original individual responses from staff and students to requests for data on race and ethnicity. In addition, at a minimum, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent under the grant or Department regulations. One exception is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action. (*See* the discussion in Part IV.A.5 of this notice.)

G. States will continue to have discretion in determining which racial and ethnic groups will be used for accountability and reporting purposes under the ESEA. (*See* the discussion in Part IV.C of this notice.)

H. Educational institutions and other recipients will be required to implement this guidance, once issued in final, no later than by the Fall of 2009 with data regarding the 2009–2010 school year,

³ Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

⁴ *See* United States Census Bureau, The Two or More Races Population: 2000, Census 2000 Brief, at p. 9 (November 2001) (hereinafter "The Two or More Races Population"); this information is on the Internet at the following address: <http://www.census.gov/prod/2001pubs/c2kbr01-6.pdf>.

and are encouraged to do so before, if feasible. (See the discussion in Part VI. of this notice.)

IV. The Department's Proposed Implementation of OMB's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

The Department has been carefully examining its options for implementing the 1997 Standards for some time. Department staff have met or spoken with a variety of individuals and organizations representing educational institutions to ascertain their needs and interests. The Department has consistently heard that major revisions to the collection of data on race and ethnicity will impose a substantial burden on educational institutions and other recipients as they adopt new data systems or modify existing systems, prepare new forms, and train staff at all levels to implement these changes. Furthermore, the Department's implementation plan must be effective for the Department's diverse uses for data on race and ethnicity, such as research and statistical analysis, measuring accountability and student achievement, civil rights enforcement, and monitoring of the identification and placement of students in special education.

Finally, the Department repeatedly has heard from educational institutions that they would prefer that the various Federal agencies involved in data collection all use the same aggregate categories so that the burden of implementing changes is minimized and educational institutions are not forced to provide different and/or inconsistent data on race and ethnicity to Federal agencies. In response to these repeated requests, the Department decided to wait to propose its implementation plan until after the EEOC announced its final implementation plan, which was published in November 2005, because the EEOC collects data on race and ethnicity for staff in elementary and secondary schools and districts.⁵

A. How Educational Institutions and Other Recipients Will Be Required to Collect Data on Race and Ethnicity from Students and Staff. This portion of the proposed guidance, Part A, presents a

proposal for how educational institutions and other recipients will collect data on race and ethnicity; Part B, which follows, proposes how data on race and ethnicity will be reported to the Department.

1. Educational Institutions and Other Recipients Will be Required to Allow Students and Staff To Select One or More Races from Five Racial Groups. Educational institutions and other recipients will be required to allow students and staff to select one or more races from the following five racial groups:

- (1) American Indian or Alaska Native;
- (2) Asian;
- (3) Black or African American;
- (4) Native Hawaiian or other Pacific Islander; and
- (5) White.

This is the minimum number of categories that educational institutions and other recipients will be required to use for purposes other than NCLB reporting. Any additional categories that educational institutions and other recipients choose to use to collect information must be subcategories of these categories (such as Japanese, Chinese, Korean, and Pakistani—subcategories of Asian). Students and staff would then be able to select one or more of these subcategories.

2. Educational Institutions and Other Recipients Will be Required to Use a Two-Question Format When Collecting Data on Race and Ethnicity Whenever Feasible. Educational institutions and other recipients will be required to collect data on race and ethnicity using a two-question format, except as provided in the following paragraph. Using the two-question format, the first question asks whether or not the respondent is Hispanic/Latino. The second question allows individuals to select one or more races from the five racial groups listed in paragraph 1 of this part, and Hispanic/Latino is NOT included in the list of racial categories. A two-question format provides flexibility and ensures data quality. In particular, a two-question format typically results in more complete reporting of Hispanic ethnicity; however, the most frequent cases of an individual not reporting a race occur for individuals who identify themselves as Hispanic/Latino. Therefore, educational institutions and other recipients should include instructions that encourage students and staff to answer both questions.

A combined one-question format in which Hispanic ethnicity is included in the list of options with the racial categories may be used if necessary for observer-collected data on race and

ethnicity. (See the discussion in Part IV.A.3 of this notice on using self-identification of the race and ethnicity of respondents.)

3. Educational Institutions and Other Recipients Should Allow Students and Staff to Self-Identify Their Race and Ethnicity Unless Self-Identification Is Not Practicable or Feasible. Educational institutions and other recipients should allow students and staff to self-identify their race and ethnicity unless self-identification is not practicable or feasible. If a student or staff member does not provide his or her race and ethnicity, educational institutions and other recipients should ensure that the respondent is refusing to self-identify rather than simply overlooking the question. If the educational institution or other recipient has provided adequate opportunity for the respondent to self-identify and he or she still leaves the items blank or refuses to complete them, observer identification may be used.

Educational institutions and other recipients also may allow parents to identify the race and ethnicity of their child when the educational institution or other recipient believes that this is appropriate, such as when a child is too young to self-identify.

4. The Department Encourages Educational Institutions and Other Recipients To Allow All Current Students and Staff to Re-Identify Their Race and Ethnicity Using the 1997 Standards. Students are typically asked their race and ethnicity upon entrance or application to an educational institution. Staff members typically provide this information upon employment or application for employment. The Department encourages educational institutions and other recipients to allow all students and staff, and other individuals that data is collected from the opportunity to re-identify their race and ethnicity under the 1997 Standards.⁶ Re-identification will provide all students, staff and other individuals the opportunity to select more than one race and to report both their ethnicity and their race separately, and will allow all individuals who previously identified themselves as within the Asian or Pacific Islander category the opportunity to select either "Asian" or

⁵ See EEOC, Agency Information Collection Activities: Notice of Submission for OMB Review; Final Comment Request (EEO-1), 70 FR 71294—71303 (November 28, 2005) (hereinafter "EEOC Notice"); this notice is on the Internet at the following address: <http://www.eeoc.gov/eeo1/> See also EEOC, Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1) Comment Request, 68 FR 34965, 34967 (June 11, 2003).

⁶ This recommendation is consistent with the recommendations of the Education Information Advisory Committee of the Chief State School Officers and the Policy Panel on Racial/Ethnic Data Collection, a panel sponsored by the National Postsecondary Education Cooperative, of the National Center for Educational Statistics and the National Science Foundation in April 1999. Both have recommended that all respondents be permitted to identify their race and ethnicity under the 1997 Standards.

“Native Hawaiian or Other Pacific Islander,” thereby conforming all racial and ethnic information to the 1997 Standards. If all individuals are not provided the opportunity to identify their race and ethnicity in a manner that is consistent with the 1997 Standards, data within schools, districts, and States will not accurately reflect the diversity of the population; and data on those who were permitted to identify their race and ethnicity under the 1997 Standards will not be easily comparable with data on those who were not permitted to identify their race and ethnicity under the 1997 Standards.

The Department’s proposal does not mandate re-identification because we recognize the considerable one-time cost that re-identification would entail. Also, the 1997 Standards do not require existing records to be updated. However, the Department’s proposal reflects our expectation that most educational institutions and other recipients will provide all respondents the opportunity to re-identify their race and ethnicity under the 1997 Standards.

The proposal requires educational institutions and other recipients to provide students and staff who enter an educational institution or other recipient program on or after the implementation deadline the opportunity to identify their race and ethnicity in a manner that is consistent with this proposed Department guidance. Thus, those educational institutions and other recipients that do not conduct a re-identification will transition to the new standard over time as new staff and students enter.

5. *Maintaining the Original Responses from Staff and Students to Requests for Data on Race and Ethnicity.* When the Department requests data on race and ethnicity from educational institutions and other recipients, the Department indicates in the instructions to the collection how long each office asks, or requires, educational institutions to keep the original individual responses to the request.

At a minimum, under 34 CFR 74.53 and 80.42, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent to the grant agreement or Department regulations and these would include records on race and or ethnicity data and the individual responses. One exception is when there is litigation, a

claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action.

If additional information on the race or ethnicity of a respondent is needed for the Department to perform its functions fully and effectively, the Department will request this information from educational institutions and other recipients, such as when the Office for Civil Rights (OCR) requests information to investigate a complaint or undertake a compliance review under 20 U.S.C. 3413(c)(1) and 34 CFR 100.6(b).

B. *The Aggregate Categories Educational Institutions and Other Recipients Will be Required to Use to Report Data on Race and Ethnicity to the Department and How to Handle Missing Data.* In contrast to the discussion in Part IV.A of this notice, which addressed how educational institutions and other recipients will collect data on race and ethnicity, this section will examine how educational institutions and other recipients will report these data on race and ethnicity to the Department.

1. *The Aggregate Categories Educational Institutions and Other Recipients Will be Required to Use to Report Data on Race and Ethnicity to the Department.* The Department proposes to have educational institutions and other recipients report aggregated data on race and ethnicity in the following 7 categories:

- (1) Hispanics of any race; and, for Non-Hispanics only,
- (2) American Indian or Alaska Native,
- (3) Asian,
- (4) Black or African American,
- (5) Native Hawaiian or Other Pacific Islander,
- (6) White, and
- (7) Two or more races.

The definitions in the 1997 Standards will be used for each category. (See the discussion in Part III.A of this notice.)

The Department proposes to have reports use these 7 aggregate categories for several reasons. Reporting these 7 aggregate categories allows data on race and ethnicity to achieve an appropriate balance that reflects the growing diversity of our Nation while minimizing the implementation and reporting burden placed on educational institutions and other recipients. The growing diversity is illustrated by the fact that in the 2000 Census, children and youth reported being of more than

one race at a substantial rate—more than twice the rate of adults.⁷

Finally, the proposed approach provides for reporting the race and ethnicity of individuals in a manner that permits effective analysis of data by agencies that are responsible for civil rights monitoring and enforcement. In those instances in which more detailed information is needed by civil rights monitoring and enforcement agencies or other offices in the Department about individuals in the “two or more races” category, educational institutions and other recipients will be contacted directly for more detailed information about the individuals.

The Department’s proposed aggregate reporting categories do not separately identify the race of Hispanics. The Department’s proposal reflects its assessment that the inclusion of Hispanics of any race in one category is appropriate in light of both the implementation burden and cost that these changes will place on educational institutions and other recipients and the Department’s need to adopt an approach that provides the Department sufficient information to fulfill its various functions. If the Department required the reporting of the same racial categories for Hispanics as non-Hispanics, 6 additional aggregate categories would be reported to the Department.

The cost and burden of these 6 additional cells would be substantial because each racial and ethnic category is often cross tabulated with other relevant information, such as the individual’s sex, disability category, or educational placement, thereby multiplying the number of categories in which information must be reported. The Department has determined that it can effectively fulfill its responsibilities that involve information on race and ethnicity if Hispanics of any race are reported in one category. The Department notes that its proposal not to separately aggregate Hispanics by race is consistent with the final implementation plan of the EEOC.

Finally, the Department’s reporting requirement for data on Hispanics in one category is different from the Department’s collection requirements discussed in Part IV.5 of this notice, which require educational institutions and other recipients to maintain information on the racial identification of Hispanics. As discussed above, the

⁷ For individuals 18 and over, 1.9 percent (3,969,342 in the 2000 Census) of individuals reported more than one race; while 4 percent (2,856,886) of individuals under 18 reported more than one race. See *The Two or More Races Population*.

Department will require educational institutions and other recipients to keep the original individual responses from staff and students to requests for data on race and ethnicity for the length of time indicated in the instructions to the collection. If the Department determines that additional information will be needed to perform its functions effectively in a specific instance, the Department will request this additional information from educational institutions and other recipients.

The EEOC published a notice in November 2005 that provided for the use of 7 categories to collect data on race and ethnicity from private employers. These 7 categories are:

- (1) Hispanics of any race; and, for non-Hispanics,
- (2) American Indian or Alaska Native,
- (3) Asian,
- (4) Black or African American,
- (5) Native Hawaiian or Other Pacific Islander,
- (6) White, and
- (7) Two or more races.

It is the Department's understanding that EEOC intends to use these 7 categories to collect data on race and ethnicity from LEAs on their employees. The adoption of 7 categories for the Department collections would mean that the Department and EEOC would collect the same categories of data on race and ethnicity from LEAs.

2. *Reporting on Individuals Who Do Not Self-Identify a Race or Ethnicity.* Some individuals will refuse to self-identify their race and/or their ethnicity. The Department currently has a different approach for how educational institutions and other recipients may handle such respondents at the elementary and secondary level as compared with the postsecondary level and with adults served under the RSA programs. Currently elementary and secondary institutions must use observer identification if a student (or his or her parents) does not self-identify a race, and postsecondary institutions also may use observer identification. In addition, since 1990, postsecondary institutions have been permitted to report aggregate information on students or staff members who do not identify a race for the IPEDS in a "race unknown" category. Similarly, RSA recipients have been permitted to report aggregate information on its clients and staff using a "race unknown" category when clients or staff do not identify a race.

The Department proposes to continue its current practice for handling missing data.⁸ Elementary and secondary

institutions and other recipients would continue to use observer identification when a respondent leaves blank or refuses to self-identify his or her race and/or ethnicity. The Department would not include a "race and/or ethnicity unknown" category in its aggregate elementary and secondary collections of data on race and ethnicity. IPEDS would continue to include a "race and/or ethnicity unknown" category for reporting aggregate data from postsecondary institutions. Similarly, the RSA will continue to use a "race and/or ethnicity unknown" category for reporting aggregate data. The "race and/or ethnicity unknown" category would not appear on forms provided to postsecondary students and staff or RSA recipients' clients and staff.

C. *Multiple Race Responses under the No Child Left Behind Act of 2001.* The creation of a multiple race aggregation category implicates several requirements under the ESEA as reauthorized by NCLB regarding race and ethnicity. First, States, districts, and schools are held accountable for making adequate yearly progress (AYP) based, among other factors, on the proficiency in reading/language arts and mathematics of major racial and ethnic groups of students.⁹ Neither ESEA nor the ESEA regulations define what is a "major" racial and/or ethnic group. States have this responsibility and the Department checks to ensure that States carry out that responsibility.

Second, each State and school district that receives ESEA Title I funds must issue a report card that includes information on student achievement at each proficiency level on the State assessment, disaggregated by race and ethnicity, among other factors, at the State, district, and school levels.¹⁰ The same racial and ethnic groups that are examined to determine AYP are typically the groups examined in State report cards.¹¹

Finally, the creation of a "two or more races" group will affect two provisions that require comparisons to prior years' data. State report cards must report the most recent two-year trend in student achievement by racial and ethnic group.¹² In addition, to take advantage of the "safe harbor" method of making

experience of the National Center for Education Statistics has shown that (1) a substantial number of college students have refused to identify a race and (2) there is often not a convenient mechanism for college administrators to use observer identification. RSA grantees have had similar experiences.

⁹ 20 U.S.C. 6311(b)(2)(B) and 6311(b)(2)(C)(v)(I)(bb); (34 CFR 200.13).

¹⁰ 20 U.S.C. 6311(h)(1) and (2).

¹¹ 20 U.S.C. 6311(h)(1)(C)(i).

¹² 20 U.S.C. 6311(h)(1)(C)(iv).

AYP (where a school can make AYP by decreasing the percent of students who are not proficient on statewide assessments by 10%), a State must compare a group's current assessment data to the prior year's data, and must examine the group's performance on the State's additional indicator, including its graduation rate.¹³

States will continue to have discretion in determining what racial and ethnic groups will be deemed "major" for purposes of fulfilling these ESEA requirements. The States vary substantially in the number and distribution of multiple race individuals and are in the best position to decide how these requirements should be applied to their populations. States implementing this new guidance will not necessarily be changing the race and ethnicity categories used for AYP purposes. If a State makes changes to the racial and ethnic categories it will use under the ESEA, the State must submit an amendment to its Title I accountability plan to the Department.

D. *Bridging Data to Prior Years' Data.*

States, educational institutions and other recipients also may propose to "bridge" the "two or more races" category into single race categories or the new single race categories into the previous single race categories. Bridging involves adopting a method for being able to link the new data collected using the two-part question with data collected before the publication of this guidance by the Department. If States, educational institutions and other recipients do bridge data, the bridging method should be documented and available for the Department to review, if necessary.

One method is to redistribute the new data collected under this guidance using the new racial categories and relate them back to the racial categories used before the publication of this guidance. For example, if a State's new data collection results in 200 students falling in the "two or more races" category at the same time that there is a combined drop in the number in the two single race categories of Black or African American students and White students, the State can adopt a method to link the 200 students in the "two or more races" category to the previously used Black and White categories.

Another method is assigning a proportion of the "two or more races" respondents into the new five single-race categories. If educational institutions or other recipients choose to bridge, they may use one of several bridging techniques. For example, they

⁸ The Department proposes to continue to include a "race unknown" category in IPEDS because the

¹³ 20 U.S.C. 6311(b)(2)(I)(i); (34 CFR 200.20(b)).

may select one of the bridging techniques in OMB's Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity.¹⁴ Educational institutions and other recipients also may choose to use the allocation rules developed by OMB in its Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.¹⁵ If a bridging technique is adopted, the same bridging technique must be used when reporting data throughout the educational institution or other recipient. For example, the same bridging technique should be used by the entire State for the purposes of NCLB.

V. OMB Guidance on Aggregation and Allocation of Multiple Race Responses for Use in Civil Rights Monitoring and Enforcement

OMB issued guidance in March 2000, for how Federal agencies will aggregate and allocate multiple race data for civil rights monitoring and enforcement.¹⁶ The guidance was issued to ensure that as the 1997 Standards are implemented, Federal agencies maintain their "ability to monitor compliance with laws that offer protections for those who historically have experienced discrimination." Furthermore, OMB sought to ensure consistency across Federal agencies and to minimize the reporting burden for institutions such as businesses and schools that report aggregate data on race and ethnicity to Federal agencies.

This OMB guidance encourages Federal agencies to collect aggregated information on a given population using the five single race categories and the four most common double race combinations. These four double race combinations are: (1) American Indian or Alaska Native *and* White, (2) Asian *and* White, (3) Black or African American *and* White, and (4) American Indian or Alaska Native *and* Black or African American. In addition to these categories, the March 2000 OMB guidance also encourages the

aggregation of data on any multiple race combinations that comprise more than one percent of the population of interest to the Federal agency. The Bulletin also encourages the reporting of all remaining multiple race data by including a "balance" category so that all data sum to 100 percent.

The OMB guidance also addresses how Federal agencies, including the Department, should allocate multiple race responses for the purpose of assessing and taking action to ensure civil rights compliance. The Department believes that requiring educational institutions and other recipients to report these four most common double race reporting combinations or information on multiple race individuals who represent more than one percent of the population on a state-by-state basis or other geographical basis would impose a substantial burden on educational institutions and other recipients without a corresponding benefit for recurring, aggregate data collections. However, in order to ensure that the Department has access to this information when needed for civil rights enforcement and other program purposes, the Department proposes to require educational institutions and other recipients to keep the original individual responses for data on race and ethnicity. This approach will provide the Department with access to this important information when needed. (See discussion in Part IV.A.5. of this notice.)

VI. The Implementation Schedule

Educational institutions and other recipients have consistently informed the Department that they will need three years from the time that the Department provided them final guidance to implement the new race and ethnicity standards.

Educational institutions and other recipients will be required to implement this guidance, once issued in final, by the Fall of 2009. Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

Many educational institutions and other recipients have already taken significant steps to develop and implement new data systems for collecting, aggregating, and reporting data on race and ethnicity. Since the mid-1990s and certainly subsequent to the October 30, 1997, issuance of the 1997 Standards, the Department has been meeting with educational agencies

and organizations regarding the need for changes to the collection of data on race and ethnicity to be consistent with the 1997 Standards. The opportunity for students and parents on their behalf to report their multiple race identity is vitally important. Multiple race children and their families were one of the primary impetuses for initiating the review of and modifying the standards. Also, with increasing automation of educational data systems, the Department believes that less than three years should be needed to implement data systems consistent with guidance in this area. The Department will work expeditiously to review any comments we receive and issue final guidance.

The Department recognizes that its delay in issuing proposed guidance, including its decision to delay issuing guidance until after EEOC issued its guidance in final form as discussed in Part IV of this notice, may result in implementation difficulties for some educational institutions and other recipients. The Department regrets any inconvenience that its delay in issuing guidance may cause. Nevertheless, given the vital importance of collecting data on race and ethnicity under the 1997 Standards and the fact that educational institutions and other recipients are being provided a considerable amount of time to comply with the 1997 Standards, the Department expects that all educational institutions and other recipients will meet this deadline.

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Dated: July 31, 2006.

Margaret Spellings,
Secretary of Education.

[FR Doc. 06-6695 Filed 8-4-06; 8:45 am]

BILLING CODE 4000-01-P

¹⁴ See OMB, Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, December 15, 2000; <http://www.whitehouse.gov/omb/inforeg/statpolicy.html#dr> (Appendix C).

¹⁵ For civil rights monitoring and enforcement purposes, OMB issued guidance in March 2000 on how Federal agencies can allocate multiple race responses to a single race response category. Multiple race responses that combine one minority race and white, for example, are to be allocated to the minority race. OMB, Bulletin 00-02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement, (March 9, 2000); <http://www.whitehouse.gov/omb/bulletins/b00-02.html> (OMB 2000 Guidance).

¹⁶ OMB 2000 Guidance.

DEPARTMENT OF EDUCATION**Submission for OMB Review;
Comment Request****AGENCY:** Department of Education.**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.**DATES:** Interested persons are invited to submit comments on or before May 31, 2006.**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 25, 2006.

Angela C. Arrington,*IC Clearance Official, Regulatory Information Management Services, Office of Management.***Office of Postsecondary Education***Type of Review:* Revision.*Title:* Higher Education Act (HEA)

Title II Reporting Forms on Teacher Quality and Preparation.

Frequency: Annually.*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; not-for-profit institutions.*Reporting and Recordkeeping Hour Burden:**Responses:* 1,309.*Burden Hours:* 121,632.*Abstract:* The Higher Education Act of 1998 calls for annual reports from states and institutions of higher education (IHE) on the quality of teacher education and related matters (Pub. L. 105-244, section 207:20 U.S.C. 1027). The purpose of the reports is to provide greater accountability in the preparation of America's teaching forces and to provide information and incentives for its improvement. Most IHEs that have teacher preparation programs must report annually to their states on the performance of their program completers on teacher certification tests. States, in turn, must report test performance information, institution by institution, to the Secretary of Education, along with institution rankings. They must also report on their requirements for licensing teachers, state standards, alternative routes to certifications, waivers, and related items.Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2975. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-6522 Filed 4-28-06; 8:45 am]

BILLING CODE 4000-01-P**DEPARTMENT OF EDUCATION****Notice of Proposed Information
Collection Requests****AGENCY:** Department of Education.**SUMMARY:** The Director, Regulatory Information Management Services,

Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 30, 2006.**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 25, 2006.

Jeanne Van Vlandren,*Director, Regulatory Information Management Services, Office of Management.***Office of Planning, Evaluation, and
Policy Development.***Type of Review:* Regular.*Title:* Annual Mandatory Collection of Elementary and Secondary Education Data for the Education Data Exchange Network (EDEN).*Frequency:* Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,052.

Burden Hours: 476,234.

Abstract: The Education Data Exchange Network (EDEN) is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. To minimize the burden on the data providers, EDEN seeks the transfer of the proposed data as soon as it has been processed for State, District, and School use. These data will then be stored in EDEN and accessed by federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use.

Additional Information: The Department of Education (ED) is specifically requesting the data providers in each the State Education Agency (SEA) to review the proposed data elements to determine which of these data can be provided for the upcoming 2006–2007 school year and which data would be available in later years (2007–2008 or 2008–2009) and which data, if any, is never expected to be available from the SEA. If information for a data group is not available, please provide information beyond the fact that it is not available. Are there specific impediments to providing this data that you can describe? Is the definition for the data group unclear or ambiguous? Do the requested code sets not align with the way your state collects the data? This is very important information because ED intends to make the collection of these data mandatory. ED also seeks to know if the SEA data definitions are consistent and compatible with the EDEN definitions and accurately reflect the way data is stored and used for education by the States, Districts, and Schools. The answers to these questions by the data providers will influence the timing and content of the final EDEN proposal for the collection of this elementary and secondary data. In addition to overall public comments, ED would also like state education data providers to consider and respond to a number of specific questions that were developed during the recent data definition cycle for EDEN 2006–07 data. While most of these questions address the ability of states to provide information, some speak to the potential

burden on states associated with overall changes in EDEN. When responding to these questions, please include the question number in your response.

1. Some of the EDEN data groups require additional information in order to interpret it properly; this is loosely described as metadata. For example, state proficiency levels and the levels that make up proficient and higher differ from one state to the next. Similarly, there are numerous data groups that collect information on state-defined items such as truants, persistently dangerous schools, and definition of school year. For all of these examples, additional information is needed in order to fully understand the reported data as well as to understand whether comparisons across the state are (or are not) appropriate. We are currently considering several ways to collect this information including web-based forms and a separate state-level submission file. What would be the most convenient way for your state to initially provide and subsequently update this information?

2. As EDEN matures, we are weighing the costs/benefits of standardizing the naming conventions of the data groups in order to align them more closely with the Federal Enterprise Architecture. We anticipate this effort would result in changes to approximately 1/3 of data group names and we would provide a crosswalk between the old name and the new name of each data group. The numbers assigned to the data groups would not change. What impact would data group name changes have on the burden associated with producing and submitting EDEN data files in your state? If we do elect to make these changes, what tools can ED provide to you to lessen your paperwork burden?

3. For the 2006–07 EDEN data set, we added a new topic area: Finance. This change was based on an understanding that in many states, data for files that include financial information come from a source that is separate from the rest of the EDEN data files. So far, we have moved the following data groups to this new topic area: 574—Federal Funding Allocation Table, 614—REAP Alternative Funding Indicator, 615—RLIS Program Table, 616—Transfer Funds Indicator, plus the two new data groups: Funds Spent on Supplemental Services and Funds Spent on School Choice. Is this conceptual change helpful in your state? Are there other data groups that you recommend that we move to this new topic area?

4. As part of the merge between NCES' Common Core of Data (CCD) and EDEN, we would like to modify the way the CCD ID code for schools and

districts are submitted in EDEN data files. The CCD ID code is made up of 3 components (a 2 digit FIPS code, a 5 digit district ID code, and a 5 digit school ID code). CCD collects all 3 of these components separately meaning that for schools, there are 3 ID codes that, together, make a unique identifier. EDEN collects a single 7 digit CCD District ID (FIPS thru District) and a single 12 digit CCD school ID (FIPS thru District thru School). What impact would there be on your state's ability to provide EDEN data files if EDEN changed to the CCD methodology for NCES IDs?

5. For Magnet School Status (at the school level) CCD collects only (1) Yes and (2) No. EDEN is set up to collect 4 categories of information regarding Magnet Schools: (1) Magnet All Students, (2) Magnet Not All Students, (3) Not Magnet, and (4) Not Collected by State. At what level of detail does your state collect information on Magnet Schools? What is the burden to your state to provide the data EDEN is requesting?

6. OSEP has historically collected placement information for school age children by age ranges (6–11, 12–17, and 18–21). For 2006–07, USED is proposing to collect this information using discrete ages (instead of the previously used age ranges). This change would take place in EDEN data group #74, Children with Disabilities (IDEA), in the category set that now contains Educational Environment (IDEA), Disability Category (IDEA), and Age Group (Placement). The comparable data group for early childhood (Data Group #613) already collects placement information by discrete age. How does this change affect your state's reporting ability and burden?

7. How do states track dropouts within each state? Would states be able to report dropout data by age or is this information only available by grade?

8. EDEN currently collects dropout data by grade for students in grades 7–12 but will be adding ungraded as an option for the 2006–07 reporting year. Does your state have a significant number of dropouts in grades other than 7–12 (e.g., a student in grade 6 who reaches the age where dropping out is an option)? Can you report this count as a single number (e.g., total dropouts below 7th grade)?

9. Please examine the two new data groups—Funds Spent on Supplemental Services and Funds Spent on School Choice. What information does your state ask LEAs to report on this subject? Can you provide the information requested? If you cannot provide data for these new data groups for 2006–07,

when will you be able to provide this data?

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 03017. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to IC_DocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to IC_DocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-6526 Filed 4-28-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education, Overview Information; Enhanced Assessment Instruments; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.368.

Dates:

Applications Available: May 1, 2006.

Deadline for Transmittal of

Applications: June 15, 2006.

Eligible Applicants: State educational agencies (SEAs); consortia of SEAs.

Estimated Available Funds:

\$11,680,000 in FY 2005 funds.

Estimated Range of Awards: \$500,000 to \$2,000,000.

Estimated Average Size of Awards: \$1,460,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To enhance the quality of assessment instruments and systems used by States for measuring the achievement of all students.

Priorities: This application includes four absolute and three competitive

preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 6112 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The competitive preference priorities are from Appendix E to the notice of final requirements for optional State consolidated applications submitted under section 9302 of the ESEA, published in the **Federal Register** on May 22, 2002 (67 FR 35967).

Absolute Priorities: For FY 2005, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that address one or more of these priorities.

These priorities are:

a. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for these assessments described in section 1111(b)(3) of the ESEA;

b. Measure student academic achievement using multiple measures of student academic achievement from multiple sources;

c. Chart student progress over time; and

d. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance and technology-based academic assessments.

Competitive Preference Priorities: For FY 2005, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional 35 points to an application, depending on the extent to which the application meets these priorities.

These priorities are: Test accommodations and alternate assessments (up to 15 points), collaborative efforts (up to 10 points), and dissemination (up to 10 points).

Note: The full text of these priorities is included in the notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967) and in the application package.

Program Authority: 20 U.S.C. 7842 and 7301a.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

\$11,680,000 in FY 2005 funds.

Estimated Range of Awards: \$500,000 to \$2,000,000.

Estimated Average Size of Awards:

\$1,460,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

III. Eligibility Information

1. **Eligible Applicants:** SEAs; consortia of SEAs.

2. **Cost Sharing or Matching:** This competition does not involve cost sharing or matching.

3. **Other:** An application from a consortium of SEAs must designate one SEA as the fiscal agent.

IV. Application and Submission Information

1. **Address to Request Application Package:** Zollie Stevenson, Jr., Student Achievement and School Accountability Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W226, Washington, DC 20202-6132. Telephone: (202) 260-1824 or by e-mail: Zollie.Stevenson@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet, budget section (chart and

organic slaughter stock unless she was raised organically from the last third of the mother's gestation, the same as other slaughter livestock (except poultry, which must be raised organically beginning with the second day of life). That remains the same in the NOP regulation.

In providing the transition language, entry in organic dairying may become easier, which could ease current milk shortages in the organic milk market at retail. Certainly it should help smaller dairy farmers entering the organic industry who may be faced with having to purchase higher priced organic feed, by allowing them to graze dairy livestock on their land that is being transitioned to organic certification.

With respect to alternatives to this proposed rule, this proposed rule merely implements language which Congress has enacted and complies with the court's final judgment and order.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by § 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

D. General Notice of Public Rulemaking

This proposed rule reflects amendments made by Congress to the OFPA that were passed on November 10, 2005 and a court final order that requires USDA to publish final revisions to the NOP regulations within 360 days of the court order, by June 4, 2006. Accordingly, AMS believes that a 15-day period for interested persons to comment on this rule is appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

The authority citation for 7 CFR part 205 continues to read as follows:

1. **Authority:** 7 U.S.C. 6501–6522.

2. Section 205.236(a)(2) is revised to read as follows:

§ 205.236 Origin of livestock.

(a) * * *

(2) *Dairy animals.* Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic, *Except*, That, crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products;

(i) Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

(ii) [Reserved]

* * * * *

3. Section 205.606 is revised to read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients.

Only the following nonorganically produced agricultural products may be used as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)),” only in accordance with any restrictions specified in this section, and only when the product is not commercially available in organic form.

(a) Cornstarch (native)

(b) Gums—water extracted only (arabic, guar, locust bean, carob bean)

(c) Kelp—for use only as a thickener and dietary supplement

(d) Lecithin—unbleached

(e) Pectin (high-methoxy)

Dated: April 24, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–4006 Filed 4–25–06; 10:52 am]

BILLING CODE 3410–02-P

DEPARTMENT OF EDUCATION

34 CFR Part 76

RIN 1890–AA13

State-Administered Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations in 34 CFR part 76 governing State reporting requirements. States are required to submit their performance reports, financial reports, and any other required reports, in the manner prescribed by the Secretary, including through electronic submission, if the Secretary has obtained approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). The amendments proposed in this notice would provide that: (1) Failure to submit these reports in the manner prescribed by the Secretary constitutes a failure, under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under the program for which the reports are submitted; and (2) if the Secretary chooses to require submission of information electronically, the Secretary may establish a transition period during which a State would not be required to submit such information electronically in the format prescribed by the Secretary, if the State meets certain requirements. The Secretary proposes these changes to the regulations in 34 CFR part 76 to highlight that the U.S. Department of Education (Department) may require, through the PRA clearance process, that States report certain information electronically; and to establish that the Department may take administrative action against a State for failure to submit reports in the manner prescribed by the Secretary. The proposed changes will facilitate the use of the Department's electronic *EDFacts* data management system (*EDFacts*) (Approved under OMB Control No. 1880–0541) for electronic submission of certain reports and provide the Department with more timely and accessible data for accountability and decision-making. The Department's goal in requiring electronic submission of information is to reduce State reporting burden significantly and to streamline dozens of data collections currently required by the Department.

DATES: We must receive your comments on or before May 30, 2006.

ADDRESSES: Address all comments about these proposed regulations to Bonny

Long, U.S. Department of Education, 400 Maryland Avenue, SW., room 7C110, Washington, DC 20202. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: <http://www.regulations.gov> or you may send your Internet comments to us at the following address: StateReporting@ed.gov.

You must include the term "State Reporting/EDFacts Regulation" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT:

Bonny Long. Telephone: (202) 401-0325 or via Internet: Bonny.Long@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. In particular, we invite specific comments on the Department's approach to implementing these regulations in regard to the following issues:

- Whether the proposed two-year transition period discussed in both the background section of this preamble and in § 76.720(c)(3) is sufficient; and
- Whether the Department's intent to require States to submit data electronically through EDFacts beginning with the 2006-07 school year, discussed in the background section of this preamble, is feasible and the effects of this action for States.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should provide to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's State-administered programs.

During and after the comment period, you may inspect all public comments

about these proposed regulations in room 7C110, 400 Maryland Avenue, SW., Washington, DC, between the hours of 9 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Complete, accurate, and reliable data are essential for effective decision-making and for implementing the requirements of the Nation's education laws. The Department's ability to collect, store, and manage education data efficiently through electronic means allows for easier submission by States and reduces duplication of collections and burdens on States. It also facilitates the efficient use of data for analysis by program officials and other interested parties. Implementation of the No Child Left Behind Act of 2001 (Pub. L. 107-110) (NCLB) requires that educators have accurate and reliable data to assess the Nation's progress in reaching the goal of ensuring that every child achieves high academic standards. These data help educators know where they need to focus their attention in order to improve the academic achievement of all students.

In 2003, the Department launched the Performance-Based Data Management Initiative (PBDMI) to design an elementary and secondary education data collection system that would: (1) Increase the analytical capabilities of Federal, State, and local governments in their efforts to improve outcomes for students; (2) improve the quality, timeliness, and accessibility of data; and (3) reduce State reporting burden by streamlining data collections and eliminating duplication in reporting. Through this initiative, the Department developed the Education Data Exchange Network (EDEN), a central repository and electronic data collection system for over 140 common data elements on student achievement, school characteristics, demographics, and program financial information. States have been submitting data to EDEN voluntarily for the past two years. The

Department is now increasing the EDEN capabilities to include, in addition to the Web-based interface that allows States to submit data electronically into EDEN, a capability for States, Department staff, and, eventually, the public, to query the database and independently analyze the data, subject to all applicable privacy protections for disclosing statistical data. To signal the increased capabilities of the system, the Department is renaming EDEN and the expanded Web-based interface "EDFacts." Accordingly, unless otherwise noted, for purposes of this preamble, the expanded system will be referred to as "EDFacts."

To date, submission of data through EDFacts has been voluntary and, therefore, regardless of whether States have reported data through EDFacts, they have been required to continue reporting data through dozens of existing data collections required by Congress and administered by the Department. These collections frequently request duplicative data, including, in particular, data on student achievement and school demographics. The Department has designed EDFacts to obtain the most commonly collected data elements so that States need only report these data once, through a centralized, electronic process. As EDFacts is implemented completely, the Department will retire dozens of separate data collections, either in full or in part, and reduce State reporting burden significantly.

Nearly every State has submitted electronically some portion of the data that it eventually will be required to submit to the Department through EDFacts. However, EDFacts will only reach its full potential in reducing duplicative State reporting burden and increasing the ability of the Department and States to analyze and improve student achievement if all States provide their data through the system.

Beginning with the data from the 2006-07 school year, the Department intends to obtain approval, pursuant to the PRA, of an information collection request that would require States to submit electronically through EDFacts the program and demographic information that States currently are required to report under separate and overlapping collections. This data collection request will eliminate the need for States to submit reports under current separate and overlapping collection instruments because the Department intends to discontinue any existing data collections that require submission of data that will be subject to the EDFacts information collection request.

EDFacts has the capability to collect data at the State, district, and school levels and, for the 2006–2007 school year the Department plans to require States to submit electronically those data, including district and school level data, that States currently are required to provide under existing data collections. The Department will continue to work with States to collect the full range of data that can be collected through EDFacts, including data that are not currently subject to one of the Department's OMB-approved information collection requests if eventually approved through future PRA information collection requests. We plan to consolidate as many information requests in EDFacts as possible because it provides the best opportunity for efficient and effective data collection on key aspects of student achievement and program performance. In this regard, States will have the option to provide, through EDFacts, additional district- and school-level data that they are not currently required to provide under existing data collections. For example, when preparing other documents to submit to the Department (e.g., a performance report), a State and its subgrantees would be able to simply reference school- and district-level data already submitted through EDFacts rather than undertake the burden of reproducing the same data in multiple documents. Once data are submitted to EDFacts, ED would be able to prepopulate collection forms so that States would only have to provide the data that does not overlap with the EDFacts data. In general, the amount of burden reduction available to States would be correlated directly with the amount of data they would provide through EDFacts. If the voluntary submission of district- and school-level data to EDFacts proves successful, the Department will consider expanding EDFacts required reporting to cover those more detailed data elements. Accordingly, the Department welcomes comments on a State's capacity for, and interest in, electronic reporting of district- and school-level data through EDFacts as an efficient means to centralize reporting and reduce State paperwork burden.

Two ways the Department will reduce State burden and reporting duplication in connection with EDFacts in the short term are as follows:

(1) The Department plans to eliminate existing collections that completely overlap with data required to be submitted through EDFacts. For reporting 2005–06 school year data, the Department is piloting this approach with four data collections for

Individuals with Disabilities Education Act (IDEA) programs. Under this pilot, States that submit specified EDFacts data files that meet current program reporting standards will be relieved of submitting those data through other means.

(2) For existing collections that partially overlap with data required to be submitted through EDFacts, the Department will pre-populate those collections with the data that States submitted through EDFacts so that States need not submit those data more than once. The Department is piloting this approach with the Consolidated State Performance Report (CSPR) (Approved under OMB Collection No. 1810–0614), required under section 9303 of the Elementary and Secondary Education Act of 1965, as amended by NCLB, for the 2004–05 school year data. Under this pilot, States will access a CSPR Web page that is pre-populated with the EDFacts data they already have submitted, decreasing significantly the number of CSPR questions they must answer.

Both the Department and each State already have committed significant resources to the Department's data management initiative; the Department believes that requiring full participation in EDFacts, while eliminating, either completely or partially, the majority of the Department's existing annual elementary and secondary education data collections, is the only way to ensure that those investments deliver their intended benefits, including reducing State reporting burden.

As part of the Department's efforts to streamline its data collection processes and elevate the importance of State compliance with reporting requirements, the Department proposes to amend the regulations in 34 CFR part 76. As more fully discussed in the Significant Proposed Regulations section of this notice, the proposed regulations in §§ 76.720 and 76.722 would provide the Department with enforcement capabilities that are not available under the PRA alone. The proposed regulations emphasize the critical need for accurate data reporting for the Department's programs, including those authorized under ESEA, by making failure to report data under a program administered by the Secretary, in a manner prescribed by the Secretary, a failure to comply substantially with a requirement of law applicable to the funds made available under that program. This standard comes from section 454 of the General Education Provisions Act (20 U.S.C. 1234c) and gives the Secretary the authority to take administrative action

against a recipient that does not comply with a program requirement.

Finally, in recognition of the fact that some States may not be able to submit data electronically in the manner prescribed by the Secretary, e.g., through EDFacts, the Department proposes to amend 34 CFR 76.720 to provide the Secretary with discretion to establish a transition period of up to two years following the date a State otherwise would be required to report the data in the electronic format prescribed by the Secretary (i.e., two years following the first reporting deadline established for the data collection through the PRA process). During this period, a State would not be required to submit reports in the electronic format prescribed by the Secretary if the State meets certain requirements. However, the Secretary may require the State to submit data in an alternative electronic format within the State's current capacity. This provision would permit those States that meet the requirements specified in proposed 34 CFR 76.720(c)(3)(i) through (iii) with a transition period, not to exceed two years following the reporting deadline for the data collection, to comply with any requirement to submit reports electronically in the manner prescribed by the Secretary. Regardless of whether a State has been authorized a transition period, the Secretary appreciates that from time to time a State may have temporary technical circumstances that would prevent it from making timely submission of data to EDFacts. Such a situation would not trigger the Secretary taking enforcement action against a State.

Significant Proposed Regulations

Section 76.720 State Reporting Requirements

Current § 76.720(a) states that § 76.720 applies to State reports required under 34 CFR 80.40 (Monitoring and reporting of program performance) and 34 CFR 80.41 (Financial reporting).

Proposed § 76.720(a) would clarify that § 76.720 applies to reports required under 34 CFR 80.40 and 34 CFR 80.41, as well as other State reports that the Secretary requires under program statutes or regulations if the reports are approved by OMB under the PRA. Pursuant to the PRA, the Department must give interested parties an opportunity to comment on, and must obtain OMB approval for, any data collection that requests data from more than nine entities, unless the collection meets one of the narrow exceptions to the PRA.

Proposed § 76.720(b)(1) and (2) would not substantively change current § 76.720(b) and (c), which specify the frequency with which States must submit reports to the Secretary.

Proposed § 76.720(c)(1) would be added to § 76.720 to clarify that States must submit any reports required under § 76.720 in the manner prescribed by the Secretary, including, if so prescribed, through electronic submission. Proposed § 76.720(c)(1) is necessary because it states in very clear terms that States must comply with the Secretary's requirements concerning the manner in which reports are submitted to the Department. The Secretary establishes submission requirements for Departmental data collection requests through the PRA clearance process. The language in proposed § 76.720(c)(1), therefore, essentially states in a single regulatory provision that States must comply with requirements established through the PRA clearance process.

Proposed § 76.720(c)(2) would be added to § 76.720 to provide that a State's failure to submit reports in the manner prescribed by the Secretary (such as electronic submission) constitutes a failure to comply substantially with a requirement of law applicable to the funds made available under the program for which the reports are submitted. Under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, if the Secretary has reason to believe that any recipient of funds under an applicable program is failing to comply substantially with any requirement of law applicable to those funds, the Secretary may take administrative action to compel compliance. Proposed § 76.720(c)(2) is necessary because it establishes that reporting requirements, such as electronic submission of reports, are substantial requirements of law such that failure to comply with these requirements would constitute a violation of section 454 of the General Education Provisions Act (20 U.S.C. 1234c). The Department proposes § 76.720(c)(2) because failure of a recipient to comply with the Department's reporting requirements, including submitting reports electronically, harms the Federal interest in establishing what the Department deems is an efficient and effective means of obtaining accurate, reliable, and valid information on the performance of the Department's programs and the success of States in meeting their goals under such laws as NCLB. The Federal interest would be harmed because States would not be using a system that was specifically designed to reduce their burden and the

Department would not be able to collect and use data as efficiently and easily. In addition, the data would not be in the form and of the quality necessary for the Department to assess program effectiveness. Moreover, States that do not comply with the Department's submission requirements would be using funds to submit reports that do not meet the Department's needs for accurate, reliable, and valid data.

Proposed § 76.720(c)(3) would be added to § 76.720 to address difficulties that States may have in reporting data electronically in a manner prescribed by the Secretary on the date States otherwise would be required to report the data electronically. Proposed § 76.720(c)(3) would provide that the Secretary has the discretion to establish a transition period of up to two years following the date by which a State otherwise would be required to report the data in the electronic manner prescribed by the Secretary. During this transition period, a State would not be required to comply with the electronic submission requirement as prescribed by the Secretary, such as the requirement to submit electronic reports through *EDFacts*, if the State submits the following to the Secretary: (a) Evidence satisfactory to the Secretary that the State is unable to comply with the electronic submission requirement specified by the Secretary in the data collection instrument on the first date the State otherwise would be required to report the data electronically; (b) any information requested in the report through an alternative means that is deemed acceptable to the Secretary, which may require submission in an alternative electronic format that is better suited to a State's current capacity; and (c) a plan showing how the State would come into compliance with the electronic submission and data quality requirements specified in the data collection instrument no later than two years following the date by which the State otherwise would be required to submit the data in the electronic manner prescribed by the Secretary.

The following example describes how this regulatory provision would work.

Example: The Department obtains approval for a new data collection instrument through the PRA process that would, for the first time, require States to submit data in an electronic format prescribed by the Secretary. The first date that States would be required to submit reports in this electronic format would be November 1, 2007. A State does not have the capacity to submit reports in the electronic format prescribed by the Secretary by November 1, 2007. The State would

submit to the Secretary the following: (1) A request for a transition period, that includes evidence that the State is not able to comply with the electronic submission requirements; (2) the information requested in the report in an alternative means that is acceptable to the Secretary; and (3) a plan explaining the steps the State will take to submit the report in the electronic format prescribed by the Secretary no later than November 1, 2009.

The Department proposes § 76.720(c)(3) because, while it believes requiring electronic submission of reports ultimately will help reduce State reporting burden and streamline the Department's data management system, it recognizes that, at this time, States have varying capabilities to report information through electronic means.

Therefore, with respect to *EDFacts*, the Department plans to use the discretion established under proposed § 76.720(c)(3) to allow States that demonstrate that they do not have the capability to submit reports as specified through *EDFacts*, a period of up to two years following the dates the States otherwise would be required to report data through *EDFacts* (i.e., until the reporting deadlines established for the 2008–09 school year data through the PRA process) to phase in their compliance with the reporting requirements. For those States, the Department plans to accept the required data through alternative means approved by the Department, which may include alternative electronic submissions, if those States provide the Department with, and the Department approves, a plan to submit the required reports through *EDFacts* no later than the reporting deadlines established for the 2008–09 school year reports through the PRA process.

With respect to proposed § 76.720(c)(3), the Department is particularly interested in receiving comment on: (a) Whether the proposed two-year transition period to phase in the electronic submission requirements prescribed by the Secretary for *EDFacts* is a sufficient period of time for States that cannot comply with these requirements to come into compliance; and (b) what kind of alternative electronic collection format would most help States that cannot comply with the requirement to submit reports electronically through *EDFacts*.

Section 76.722 Subgrantee Reporting Requirements

Current § 76.722 allows States to require subgrantees to furnish reports to the States that the States need to carry

out their obligations under the program for which the subgrantees receive funds.

Proposed § 76.722 would add language to § 76.722 to allow States to require subgrantees to submit, in the format and manner designated by the States, any reports that the States need to comply with the requirements under proposed § 76.720 and to carry out other responsibilities under the program. The proposed changes to current § 76.722 are intended to make it easier for States to comply with the requirements under proposed § 76.720 that the States submit reports to the Department in the manner prescribed by the Secretary.

Executive Order 12866

1. Potential Costs and Benefits

The Department has determined that these proposed regulations are a significant regulatory action under Executive Order 12866 and OMB has reviewed them. In accordance with the Executive Order, the Department has also assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering the Department's State-administered programs effectively and efficiently. These regulations are generally not expected to require undue additional State resources because they do not require States to report more data than they currently are required to report to the Department. However, a potential new cost related to these regulations is the acquisition of the necessary technology for those States that do not currently have the capability to report information through electronic means. The Department expects that most States currently have this technology and that this cost would apply to very few (if any) States. For those States to which the cost is applicable, the cost is likely to be minimal.

The potential benefits of these proposed regulations have been identified above, but briefly include: more timely and accessible data for accountability and decision-making; reduced State reporting burden; and, ultimately, improved implementation of the requirements of the Nation's education laws.

In assessing the potential costs and benefits of this regulatory action, we have determined that the benefits would justify the costs. The potential costs and benefits of the Department's information collection requests are identified in notices published in accordance with the PRA.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Could the description of the proposed regulations in the

SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because the regulation would affect only States and State agencies, the regulations would not have an impact on small entities.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any new information collection requirements.

Intergovernmental Review

These proposed regulations affect State-administered programs of the Department that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary requests comments on whether these proposed regulations

would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at this site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at the site listed above. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 76

Elementary and secondary education, Reporting and recordkeeping requirements.

Dated: April 24, 2006.

Margaret Spellings,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 76 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

2. Section 76.720 is revised to read as follows:

§ 76.720 State reporting requirements.

(a) This section applies to a State's reports required under 34 CFR 80.40 (Monitoring and reporting of program performance) and 34 CFR 80.41 (Financial reporting), and other reports required by the Secretary and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

(b) A State must submit these reports annually unless—

(1) The Secretary allows less frequent reporting; or

(2) The Secretary requires a State to report more frequently than annually,

including reporting under 34 CFR 80.12 (Special grant or subgrant conditions for "high-risk" grantees) or 34 CFR 80.20 (Standards for financial management systems).

(c)(1) A State must submit these reports in the manner prescribed by the Secretary, including submitting any of these reports electronically and at the quality level specified in the data collection instrument.

(2) Failure by a State to submit reports in accordance with paragraph (c)(1) of this section constitutes a failure, under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under that program.

(3) For reports that the Secretary requires to be submitted in an electronic manner, the Secretary may establish a transition period of up to two years following the date the State otherwise would be required to report the data in the electronic manner, during which time a State will not be required to comply with that specific electronic submission requirement, if the State submits to the Secretary—

(i) Evidence satisfactory to the Secretary that the State will not be able to comply with the electronic submission requirement specified by the Secretary in the data collection instrument on the first date the State otherwise would be required to report the data electronically;

(ii) Information requested in the report through an alternative means that is acceptable to the Secretary, such as through an alternative electronic means; and

(iii) A plan for submitting the reports in the required electronic manner and at the level of quality specified in the data collection instrument no later than the date two years after the first date the State otherwise would be required to report the data in the electronic manner prescribed by the Secretary.

(Authority: 20 U.S.C. 1221e-3, 1231a, and 3474)

3. Section 76.722 is revised to read as follows:

§ 76.722 Subgrantee reporting requirements.

A State may require a subgrantee to submit reports in a manner and format that assists the State in complying with the requirements under 34 CFR 76.720 and in carrying out other responsibilities under the program.

(Authority: 20 U.S.C. 1221e-3, 1231a, and 3474)

[FR Doc. E6-6355 Filed 4-26-06; 8:45 am]

BILLING CODE 4000-01-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2006-2]

Electronic Payment of Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing to amend its rules governing the submission of royalty fees to the Copyright Office to require such payments to be made by electronic funds transfer.

DATES: Written comments are due June 12, 2006. Reply comments are due July 11, 2006.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to Room LM-401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE, Washington, DC 20559-6000. If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, NE, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Comments and reply comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT:

Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: Cable systems and satellite carriers that retransmit broadcast signals in accordance with the provisions governing the statutory licenses set forth

in sections 111 and 119 of the Copyright Act, title 17 of the United States Code, respectively, are required to pay royalty fees to the Copyright Office. The Copyright Office also receives statutory fees from manufacturers and importers of digital audio recording devices and media who distribute these products in the United States. 17 U.S.C. chapter 10. Payments made under the cable and satellite carrier statutory licenses are remitted semiannually to the Copyright Office. Payments made under the Audio Home Recording Act of 1992 are made quarterly. The Copyright Office invests the royalties in United States Treasury securities pending distribution of these funds to those copyright owners who are entitled to receive a share of the fees.

The current Copyright Office regulations permit payment by three different methods: electronic funds transfer ("EFT"), certified or cashier's check, or money order. 37 CFR 201.11 (f), (g) and (h); 37 CFR 201.17 (i) and (j); and 37 CFR 201.28 (e). A mechanism for electronic payments was added in 1991, since it was thought that use of electronic payments would facilitate the process and lessen the administrative burden on the Office and on the filer. See 56 FR 29588 (June 28, 1991). An electronic payment option provides advantages to the payor and the Copyright Office as the agency responsible for the collection and distribution of the royalty fees. EFTs can be transmitted either as an Automated Clearing House ("ACH") credit or a Fedwire ("Wire") transaction depending upon how you arrange the transfer through your financial institution, or as an ACH debit by using the U. S. Department of the Treasury, Financial Management Service's web based remittance system, Pay.gov. In an ACH credit, your financial institution sends the remittance to the U. S. Treasury; whereas, in an ACH debit, you authorize the U. S. Treasury to take the funds out of the account at your financial institution.

Use of an electronic payment option offers specific advantages over payment via a check or money order. First, the remitters gain more time to transfer funds without fear of incurring interest assessments for late payments. In the case of a Wire transaction, the remitter may make a payment up until and including the due date (provided the financial institution is open that day and is still processing wire transfers), whereas an ACH transaction requires more time. It must be completed one or two banking days before the due date to ensure interest for late payments are not assessed. Second, electronic payments avoid the problems associated with lost



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

ASSISTANT SECRETARY

MAR 30 2006

Ms. Rachel F. Potter
Office of Management and Budget
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Dear Ms. Potter:

As part of the approval process for OMB Approval Number 1880-0541, regarding collection of elementary and secondary education data for the Education Data Exchange Network (EDEN), the Department of Education (ED) was asked to provide a brief memorandum describing the EDEN implementation process, including public comments/feedback received and progress made in certifying state data for reduction and elimination. This memo describes the process currently being implemented to establish the elementary and secondary education data sets to be provided by state education agencies to EDEN for the 2006-2007 school year. The current data evaluation process represents our best understanding of what the agency-wide process will be in future years.

In preparation for identifying the data elements to propose for collection during the next school year (2006-2007), the EDEN team met with many elementary and secondary program staff and managers to review the data being collected for the current school year (2005-2006). Representatives from the Regulatory Information Management Service (RIMS), the Office of the General Counsel, and Budget Services attended most of these meetings. As the analysis and reporting potential of the current EDEN data was explored, future changes, whether they be additional data elements or the removal of currently collected data, were also discussed. In February 2006, joint teams from program offices and the EDEN Team began a two-month process of articulating the data elements that should be deleted and/or added to the 2006-2007 collection. On March 13 and 14, 2006, we convened a special meeting with several state EDEN coordinators to share the results of current discussions on the proposed data elements and receive feedback from their perspective. During the state coordinators meetings, several program offices also presented data burden reduction plans and received feedback.

We have made great progress toward reconciling comments and are prepared to move forward with the public comment phase. This next step includes a sixty-day public comment period (May – June 2006) throughout which we will collect and consolidate suggestions, comments and questions. During the public comment period, there will be two national meetings to specifically address the proposed data elements. The Education Information Management Advisory Consortium of the Council of Chief State School Officers will meet May 1–3, 2006 and the EDEN Team will host a conference for state

coordinators May 22–23, 2006. A considerable amount of time at each of these meetings will focus on the proposed data elements and related elementary and secondary data quality and collection issues.

Another part of this process is receiving public comment on our estimation of the paperwork burden reduction opportunities created by the collection of the 2006-2007 EDEN data. A crosswalk of the data required by the many separate, current program office data collections, with the proposed 2006-2007 EDEN data elements, will also be open for public comment. This process will establish the continuity of federal program data flow and help estimate the opportunities to eliminate redundant ED program data collections.

At the end of the comment period, all comments and suggestions will be addressed and all questions answered and ED will submit a request for approval to the Office of Management and Budget for consideration. That review includes another public comment period (30-days) and clarification or reconciliation of any questions or concerns that might remain. The projected completion of this collection approval process is September 2006.

Based on the public comment and feedback received during the two comment periods, ED will make adjustments to the 2006-2007 data set and establish a schedule for retiring unnecessary collections and reducing paperwork burden.

The EDEN Team plans to submit a request for approval for this 2006-2007 collection through RIMS, under the required Paperwork Reduction Act collection approval process. RIMS staff will work with the EDEN Team to incorporate information gained through this process and follow-up with program offices regarding their data collections. RIMS will also ensure burdens are reduced with the appropriate collections, at the right time, as data elements are transformed to EDFacts. This will be accomplished through submission to OMB of whole collections, partial collections or OMB83 C change worksheets.

If you have any questions regarding this plan or would like more specifics, please contact Ross Santy at 202-401-3554.

Sincerely,

A handwritten signature in cursive script that reads "Tom Luce".

Tom Luce

Sherrill, Pat

From: Sherrill, Pat
Sent: Tuesday, May 02, 2006 8:23 AM
To: PBDMI
Subject: Invitation to Comment

Importance: High

PBDMI/EDEN Coordinators and friends

We have just published a Notice of Proposed Information Collection that covers the EDEN 2006-2007 data collection and a Notice of Proposed Rulemaking that establishes the conditions for making information collections mandatory. I am attaching each of these publications for your review. As always, we invite your comments, questions and suggestions for improvement. Please follow the directions in each article explaining how you can submit your comments. We will be spending time discussing both in our next meetings scheduled for May 22 and 23.



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NPRM.pdf

Sherrill, Pat

From: Sherrill, Pat
Sent: Monday, August 07, 2006 8:21 AM
To: 'PBDMI'
Subject: Two Invitations to Comment

Importance: High

PBDMI/EDEN Coordinators and friends

We have just published a

Notice of Proposed Information Collection that covers the EDEN 2006-2007 data collection, and

Proposed Guidance on Maintaining, Collecting, and Reporting Data on Race and Ethnicity.

I am attaching each of these publications for your review. As always, we invite your comments, questions and suggestions for improvement. Please follow the directions in each article explaining how you can submit your comments.



EDEN FR
notice 8072006.p



Guidance on
Race.pdf